

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

ORLY CALDERON,

Plaintiff,

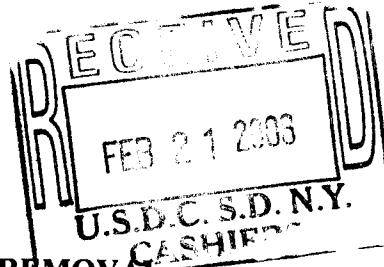
v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,

Defendant.

08 CV 01721

CASE NO.: _____



DEFENDANT'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant, by and through counsel, hereby remove this action from the Supreme Court of the State of New York, County of Bronx (the "State Court") to this Court. The grounds for removal are as follows:

1. Plaintiff commenced this action by filing a Complaint docketed at No. 300080/08 in the State Court on or about January 7, 2008. Defendant first received a copy of the Complaint on January 22, 2008. This Notice of Removal is timely filed with this Court, pursuant to 28 U.S.C. § 1446(b), because thirty days have not expired since this action became removable to this Court.
2. Attached as Exhibit 1 are all of the process, pleadings and other documents served thus far in this action. No other proceedings have occurred in this action.
3. In her Complaint, Plaintiff seeks life insurance benefits under the terms of an employee benefit plan governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.*
4. Because Plaintiff's claims relate to the payment of benefits pursuant to an employee benefit plan governed by ERISA, the federal courts have original jurisdiction over this matter

pursuant to 28 U.S.C. §§ 1331, 1367 and 29 U.S.C. § 1132(e). ERISA preempts any state law claims and causes of action and provides exclusive federal remedies for resolution of claims relating to plan benefits. *See also Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 67 (1987) (“Accordingly, this suit, though it purports to raise only state law claims, is necessarily federal in character by virtue of the clearly manifested intent of Congress. It therefore arise[s] under the . . . laws . . . of the United States, 28 U.S.C. § 1331, and is removable to federal court by the defendants, 28 U.S.C. § 1441(b).”).

5. This Court has original jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331.

6. This Court has supplemental jurisdiction over Plaintiff's breach of contract (insurance policy) claim pursuant to 28 U.S.C. § 1367(a) because the state law claim is so related to and based upon the payment of benefits under an ERISA plan that they form part of the same case or controversy.

7. The Notice of Filing of Notice of Removal is attached hereto as Exhibit 2.

WHEREFORE, Defendant respectfully requests the removal of this action to the United States District Court for the Southern District of New York.

Dated: February 21, 2008

Respectfully submitted,



Brian A. Herman (BH-0731)
 Morgan, Lewis & Bockius LLP
 101 Park Avenue
 New York, New York 10178
 (212) 309-6909
 (212) 309-6001

Attorneys for Defendant

Of Counsel:

Miriam G. Bahcall, Esq.
Beth A. Black, Esq.
Morgan, Lewis & Bockius LLP
77 West Wacker Drive, 5th Floor
Chicago, Illinois 60601
(312) 324-1000
(312) 324-1001 (fax)

66

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
ORLY CALDERON,

Plaintiff,

Index No.

300080 / 8

Plaintiff designates
Bronx County as the
place of trial

-against-

The basis of the
venue is Plaintiff's
Residence

PRUDENTIAL INSURANCE COMPANY
OF AMERICA,

Defendant.

SUMMONS

Plaintiff resides at
2600 Netherland Avenue
Riverdale, NY 10463

-----X
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Garden City, New York
January 3, 2008

DATE FILED:

Jan. 7, 2008

By:

Jules A. Epstein

JULES A. EPSTEIN, P.C.

Attorneys for Plaintiff

600 Old Country Road, Suite 505

Garden City, New York 11530

(516) 745-1325

NOTE: The law or rules of court provide that:

- (a) if this summons is served by its delivery to you, or (for a corporation) an agent authorized to receive service, personally within the County of Nassau you must answer within twenty (20) days after such service; or
- (b) if this summons is served otherwise than as designated in subdivision (a) above, you are allowed thirty (30) days to answer after the proof of service is filed with the Clerk of this Court.
- (c) You are required to file a copy of your answer together with proof of service with the Clerk of the district in which the action is brought within ten (10) days of the service of the answer.

Defendant's Address:
751 Broad Street
Newark, NJ 07102

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X Index No. 300080/08
ORLY CALDERON,

Plaintiff,
-against-

PRUDENTIAL INSURANCE COMPANY
OF AMERICA,

CORRECTED
VERIFIED COMPLAINT

Defendant.

-----X

S I R S :

PLEASE TAKE NOTICE that Plaintiff, by her attorneys JULES A. EPSTEIN, P.C., complaining of the defendant alleges:

1. At all relevant times, Plaintiff was and is a resident of the State of New York, County of Bronx.
2. At all relevant times, Defendant was and is a foreign corporation authorized to do business in New York, and engaged in the business of issuing life insurance policies.
3. At all relevant times, Defendant was and is authorized to issue life insurance policies in the State of New York by the New York State Superintendent of Insurance.
4. Prior to March 4, 2006, for a good and valuable consideration, Defendant issued its policy of insurance #G-4442 insuring the life of Abraham Abramovsky, Social Security #128-38-9296 (the "Policy").
5. Upon information and belief, the Policy provides for death benefits to be paid to the beneficiaries designated by the insured, Abraham Abramovsky, in the amount of \$175,000.

6. On or about March 4, 2006, Abraham Abramovsky executed and delivered to Defendant a beneficiary designation on the standard form provided by Defendant (the "Beneficiary Designation"). A true copy of the Beneficiary Designation is annexed as Exhibit "1".

7. The Beneficiary Designation provides for Plaintiff to receive twenty (20%) percent of the benefits payable under the Policy upon Abraham Abramovsky's death.

8. Abraham Abramovsky died a resident of the State of New York on July 23, 2007.

9. At the time of Abraham Abramovsky's death, all premiums payable for the Policy were paid, and the Policy was in full force and effect at the time of Abraham Abramovsky's death.

10. Plaintiff gave Defendant notice and proof of Abraham Abramovsky's death.

11. Prior to the commencement of this action, Plaintiff duly delivered to Defendant her demand for payment of twenty (20%) percent of the death benefit proceeds of the Policy in accordance with the Beneficiary Designation form annexed as Exhibit "2".

12. No part of the twenty (20%) percent death benefits payable to Plaintiff have been paid to her despite due demand.

13. By virtue of the foregoing, Defendant has breached its policy of insurance insuring the life of Abraham Abramovsky.

WHEREFORE, Plaintiff demands judgment against Defendant in the sum of \$35,000, or such other sum as determined by the Court, together with interest and the costs and disbursements of the action.

Dated: Garden City, New York
January 3, 2008

Yours, etc.,


Jules A. Epstein, Esq.
JULES A. EPSTEIN, P.C.
Attorney for Plaintiff
600 Old Country Road, Suite 505
Garden City, NY 11530
516-745-1325

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

The undersigned, an attorney admitted to practice in the Courts of New York, respectfully affirms under oath:

That deponent is the attorney of record for Plaintiff in the within action. Deponent has read the foregoing COMPLAINT in the within action and upon information and belief, deponent believes the contents thereof to be true.

The grounds of deponent's beliefs are communications with the Plaintiff.

This verification is made by deponent and not by Plaintiff because Plaintiff is out of the county where deponent maintains his office.

Dated: Garden City, New York
January 2, 2008

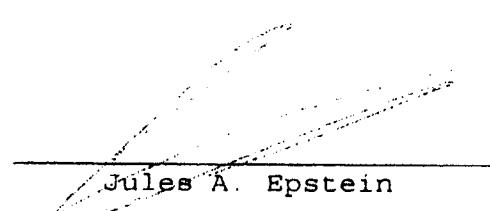

Jules A. Epstein

EXHIBIT “1”

02/21/2008 14:29 FAX 718 817 4929

FORDHAM UNIVERSITY

002

Beneficiary Designation - Fordham University**Control # 44442**

Employee General Information					
Last Name	First Name	Middle Initial	Social Security No		
Abrahmovsky	Abraham		442-38-5246		
Beneficiary Designation					
If more than one beneficiary is desired, please write their name(s) and relationship(s) on the lines below. If more than one primary beneficiary is designated, settlement will be made in equal shares to the designated beneficiaries (or beneficiary) who are then still living, unless their shares are specified. If no named beneficiary, or no beneficiary survives the insured, settlement will be made in accordance with the terms of your Group Contract.					
Basic Term Life and AD&D - Primary Beneficiary Designation					
(1) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage
Calderon	Orly		111 72 0762	friend	20%
Address: 2600 Netherland Ave #1825 Brooklyn NY 10463					
(2) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage
Ariva	Abrahmovsky		273703604	Daughter	20%
Address: 411 Crawford Ave. Syracuse NY 13224					
Basic Term Life and AD&D - Contingent Beneficiary Designation					
(1) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage
Abrahmovsky	ABRA	2	097742666	Son	20%
Address: 154 W. 70 st # 12-H NYC NY 10023					
(2) Last Name	First Name	Middle Initial	Social Security No.	Relationship	Percentage
Abrahmovsky	Orv.		097745618	Son	20%
Address: 301 East 14th NY					
Employee Signature <u>Abraham Obre</u>				Date (Month, Day, Year) <u>3/4/06</u>	
If you have any questions, please see Human Resources for details.					

The Prudential Insurance Company of America, 751 Broad Street, Newark, NJ 07102. Life Claims: 1-800-524-0542. Prudential Financial and the Rock logo are registered service marks of The Prudential Insurance Company of America and its affiliates.

Prudential  **Financial**

GL.2005.289

Ed.8/2005

ECEd.12.2005-0487

EXP.6.2007

* Abrahmovsky Ari ssn# 097745618 son, 20%
411 Crawford Ave. Syracuse NY 13224

EXHIBIT “2”



Beneficiary Statement

Each beneficiary should complete Sections 1, 2, and 3. If accidental death or Business Travel Accident benefits are being claimed, Section 4 should also be completed. Return the form to the deceased's Employer/Plan Administrator.

1 Deceased's Information		First Name Abraham	MI <input type="checkbox"/>	Last Name Abrahamsky
		Social Security Number 128 38 9296		
2 Beneficiary's Information		First Name Orly	MI <input type="checkbox"/>	Last Name Calderon
		Street 2600 Weatherland Ave	State <input type="checkbox"/>	Zip Code 10463
		City Riverdale	City <input type="checkbox"/>	Date of Birth (mm dd yy) 10 26 1962
		Telephone Number 412 396 0676		

3 Taxpayer Identification Number and Certification	Prudential requires your Taxpayer Identification Number. The Taxpayer Identification Number is either the Social Security Number or the Employer Identification Number. If you: <ul style="list-style-type: none"> • are an individual, your Taxpayer Identification Number is the Social Security Number. • represent a trust or estate, the Taxpayer Identification Number is its Employer Identification Number. • represent a minor, please provide the minor's Social Security Number. • are applying for a Taxpayer Identification Number, please write "applied for" in the space provided.
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TAXPAYER IDENTIFICATION NUMBER/FORM W9 CERTIFICATION:

Under penalties of perjury, I certify that the number shown on this form is my correct Taxpayer Identification Number (Social Security Number). I further certify that the citizen/residency status I have listed on this form is my correct citizen/residency status. I am not subject to backup withholding because (a) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding, (b) the IRS has told me that I am no longer subject to a backup withholding order, or (c) I am exempt from backup withholding.

Social Security Number or Taxpayer Identification Number of beneficiary **111 72 0762**

Check here only if you are subject to backup withholding:

I have been notified by the Internal Revenue Service that I am subject to backup withholding due to underreporting of interest or dividends.

I am not a U.S. person (including resident alien). I am a citizen of

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

X

Signature

dk

Date (mm dd yyyy)

09 17 2007



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.

ORLY CALDERON, Plaintiff,
-against-

PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Defendant.

SUMMONS AND COMPLAINT

JULES A. EPSTEIN, P.C.
Attorney for Plaintiff
600 Old Country Road, Suite 505
Garden City, NY 11530
(516) 745-1325
(516) 222-1499 (Fax)

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: 1/30/08

Signature

Print Signer's Name JULES A. EPSTEIN

Service of a copy of the within is hereby admitted

Dated,
Attorney(s) for Defendants

SIR: PLEASE TAKE NOTICE
NOTICE OF that the within is a (certified) true copy of a
ENTRY entered in the office of the clerk of the within named Court
on 2004

NOTICE OF that an Order of which the within is a true copy will be
SETTLEMENT presented for settlement to the one of the
judges of the within named Court, at 100 Supreme Court Drive,
Mineola, NY on , at 9:30 A. M.

Dated: Yours, etc.,
Jules A. Epstein, P.C.
Attorney for Plaintiff
600 Old Country Road, Suite 505
Garden City, NY 11530
(516) 745-1325
(516) 222-1499 (Fax)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X Index No. 300080/08
ORLY CALDERON, :
Plaintiff, :
: :
-against- :
: :
PRUDENTIAL INSURANCE COMPANY :
OF AMERICA, :
: :
Defendant. :
-----X

NOTICE OF FILING OF NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1446(d), Defendant files herewith a copy of the Notice of Removal filed by it in the United States District Court for the Southern District of New York on February 21, 2008. A certified copy of the Notice of Removal will be filed upon receipt from the federal court.

Dated: February 21, 2008

Respectfully Submitted,



Brian A. Herman (BH-0731)
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, New York 10178
(212) 309-6909
(212) 309-6001

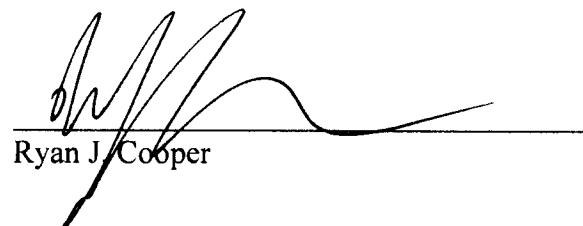
Of Counsel:

Miriam G. Bahcall, Esq.
Beth A. Black, Esq.
Morgan, Lewis & Bockius LLP
77 West Wacker Drive, 5th Floor
Chicago, Illinois 60601
(312) 324-1000
(312) 324-1001 (fax)

CERTIFICATE OF SERVICE

The undersigned hereby certifies on February 21, 2008, the foregoing Defendant's Notice of Removal was filed with the clerk of the Court and that a copy of Defendants' Notice of Removal was served via first class mail, upon the following:

Jules A. Epstein, Esq.
Jules A. Epstein, P.C.
600 Old Country Road, Suite 505
Garden City, New York 11530



Ryan J. Cooper

A handwritten signature in black ink, appearing to read "Ryan J. Cooper", is written over a horizontal line. The signature is fluid and cursive, with a prominent loop on the left and a smaller loop on the right.